

1 Courtland L. Reichman (California Bar No. 268873)
2 Jennifer P. Estremera (California Bar No. 251076)
3 MCKOOL SMITH PC
4 255 Shoreline Drive, Suite 510
5 Redwood Shores, California 94065
6 Telephone: (650) 394-1400
7 Facsimile: (650) 394-1422
8 creichman@mckoolsmith.com
9 jestremera@mckoolsmith.com

10 John B. Campbell (Admitted *Pro Hac Vice*)
11 Kathy H. Li (Admitted *Pro Hac Vice*)
12 MCKOOL SMITH PC
13 300 W. 6th Street, Suite 1700
14 Austin, Texas 78701
15 Telephone: (512) 692-8700
16 Facsimile: (512) 692-8744
17 jcampbell@mckoolsmith.com
18 kli@mckoolsmith.com

19 Attorneys for Plaintiff
20 IMMERSION CORPORATION

21 **UNITED STATES DISTRICT COURT**
22 **NORTHERN DISTRICT OF CALIFORNIA**

23 **SAN JOSE DIVISION**

24 **IMMERSION CORPORATION,**) Case No. 5:17-cv-3886-LHK
25 Plaintiff,)
26 v.)
27 **FITBIT INC.,**)
28 Defendant.)
29 _____)

30 **IMMERSION CORPORATION'S
31 ANSWER TO FITBIT, INC.'S
32 COUNTERCLAIMS**

1 Plaintiff Immersion Corporation (“Immersion”) hereby answers the Counterclaims of
2 Defendant Fitbit, Inc. (“Fitbit”). Except where expressly admitted or qualified below, Immersion
3 denies Fitbit’s allegations, and Immersion hereby incorporates the allegations set forth in
4 Immersion’s Complaint.

5 **THE PARTIES**

6 1. Admitted.

7 2. Admitted.

8 **JURISDICTION AND VENUE**

9 10 3. Immersion admits that this Court has jurisdiction over claims arising under 28 U.S.C.
11 §§ 1331, 1338(a), 2201 *et. seq.*, and the patent laws of the United States, 35 U.S.C. § 1 *et seq.*
12 Except as expressly admitted herein, Immersion denies these allegations.

13 4. Admitted.

14 5. Admitted.

15 **FACTUAL BACKGROUND**

16 6. Admitted.

17 7. Admitted.

18 8. Admitted.

19 9. Admitted.

20 10. Admitted.

21 11. Immersion admits that an actual and justiciable controversy has arisen and exists
22 between Immersion and Fitbit. Except as expressly admitted herein, Immersion denies these
23 allegations.

1 **FIRST COUNTERCLAIM**

2 **Declaratory Judgment of Non-Infringement of U.S. Patent No. 8,059,105**

3 12. Immersion repeats its responses to the paragraphs Fitbit incorporates by reference.

4 13. Immersion admits that on July 10, 2017, it filed its Complaint for Patent Infringement
5 asserting that Fitbit infringes U.S. Patent No. 8,059,105 ("105 patent"), which created a case or
6 controversy between the parties. Except as expressly admitted herein, Immersion denies these
7 allegations.

8 14. Denied.

9 15. Denied.

10 16. Denied. But as noted in Immersion's Complaint for Patent Infringement, Immersion
11 is entitled to recover its reasonable attorneys' fees because Immersion's case alleging patent
12 infringement is exceptional under 35 U.S.C. § 285.

13 **SECOND COUNTERCLAIM**

14 **Declaratory Judgment of Non-Infringement of U.S. Patent No. 8,351,299**

15 17. Immersion repeats its responses to the paragraphs Fitbit incorporates by reference.

16 18. Immersion admits that on July 10, 2017, it filed its Complaint for Patent Infringement
17 asserting that Fitbit infringes U.S. Patent No. 8,351,299 ("299 patent"), which created a case or
18 controversy between the parties. Except as expressly admitted herein, Immersion denies these
19 allegations.

20 19. Denied.

21 20. Denied.

22 21. Denied. But as noted in Immersion's Complaint for Patent Infringement, Immersion
23 is entitled to recover its reasonable attorneys' fees because Immersion's case alleging patent
24 infringement is exceptional under 35 U.S.C. § 285.

THIRD COUNTERCLAIM

Declaratory Judgment of Non-Infringement of U.S. Patent No. 8,638,301

22. Immersion repeats its responses to the paragraphs Fitbit incorporates by reference.
23. Immersion admits that on July 10, 2017, it filed its Complaint for Patent Infringement asserting that Fitbit infringes U.S. Patent No. 8,638,301 (“301 patent”), which created a case or controversy between the parties. Except as expressly admitted herein, Immersion denies these allegations.

24. Denied.

25. Denied.

26. Denied. But as noted in Immersion's Complaint for Patent Infringement, Immersion
is entitled to recover its reasonable attorneys' fees because Immersion's case alleging patent
infringement is exceptional under 35 U.S.C. § 285.

FOURTH COUNTERCLAIM

Declaratory Judgment of Invalidity of U.S. Patent No. 8,059,105

27. Immersion repeats its responses to the paragraphs Fitbit incorporates by reference.

28. Immersion admits that on July 10, 2017, it filed its Complaint for Patent Infringement asserting that Fitbit infringes the '105 patent, which created a case or controversy between the parties. Except as expressly admitted herein, Immersion denies these allegations.

29. Denied.

30. Denied.

31. Denied.

32. Denied. But as noted in Immersion's Complaint for Patent Infringement, Immersion is entitled to recover its reasonable attorneys' fees because Immersion's case alleging patent infringement is exceptional under 35 U.S.C. § 285.

FIFTH COUNTERCLAIM

Declaratory Judgment of Invalidity of U.S. Patent No. 8,351,299

33. Immersion repeats its responses to the paragraphs Fitbit incorporates by reference.
34. Immersion admits that on July 10, 2017, it filed its Complaint for Patent Infringement asserting that Fitbit infringes the '299 patent, which created a case or controversy between the parties. Except as expressly admitted herein, Immersion denies these allegations.

35. Denied.

36. Denied.

37. Denied.

38. Denied. But as noted in Immersion's Complaint for Patent Infringement, Immersion is entitled to recover its reasonable attorneys' fees because Immersion's case alleging patent infringement is exceptional under 35 U.S.C. § 285.

SIXTH COUNTERCLAIM

Declaratory Judgment of Invalidity of U.S. Patent No. 8,638,301

39. Immersion repeats its responses to the paragraphs Fitbit incorporates by reference.
40. Immersion admits that on July 10, 2017, it filed its Complaint for Patent Infringement asserting that Fitbit infringes the '301 patent, which created a case or controversy between the parties. Except as expressly admitted herein, Immersion denies these allegations.

41. Denied.

42. Denied.

43. Denied.

44. Denied. But as noted in Immersion’s Complaint for Patent Infringement, Immersion is entitled to recover its reasonable attorneys’ fees because Immersion’s case alleging patent infringement is exceptional under 35 U.S.C. § 285.

1 **AFFIRMATIVE DEFENSES TO FITBIT'S COUNTERCLAIMS**

2 45. Immersion incorporates its responses to paragraphs 1–44.
3 46. Fitbit has failed to state a claim upon which relief can be granted.
4 47. Fitbit has not suffered any harm and/or any harm sustained by Fitbit was caused in
5 whole or in part by Fitbit and/or third parties.

6 48. Fitbit's Counterclaims do not meet the requirements for declaratory relief.
7 49. On information and belief, Fitbit's Counterclaims are or may be barred by the
8 doctrines of laches or waiver.

10 50. On information and belief, Fitbit's Counterclaims are or may be barred by the
11 doctrine of unclean hands.

12 51. Immersion reserves its rights to assert additional affirmative defenses as they may
13 become known to Immersion through discovery.

15 **PRAYER FOR RELIEF**

16 Immersion denies that Fitbit is entitled to any relief. Immersion respectfully requests that
17 judgment on Fitbit's Counterclaims be entered in favor of Immersion, that the Court award
18 Immersion the relief requested in its Complaint, that Immersion be awarded its attorneys' fees, costs,
19 and expenses in defending Fitbit's Counterclaims, and that Immersion be awarded such other relief
20 as the Court deems just and proper.

22 **DEMAND FOR JURY TRIAL**

23 Immersion hereby demands a trial by jury on all issues so triable.

1 DATED: April 9, 2018

Respectfully submitted,

2 MCKOOL SMITH, P.C.

3 */s/ Courtland L. Reichman*

4 Courtland L. Reichman
5 (California Bar No. 268873)
6 Jennifer P. Estremera
7 (California Bar No. 251076)
8 MCKOOL SMITH PC
9 255 Shoreline Drive, Suite 510
Redwood Shores, California 94065
Telephone: (650) 394-1400
Facsimile: (650) 394-1422
reichman@mckoolsmith.com
jestremera@mckoolsmith.com

10
11 John B. Campbell (Admitted Pro Hac Vice)
12 Kathy H. Li (Admitted Pro Hac Vice)
13 MCKOOL SMITH PC
14 300 W. 6th Street, Suite 1700
Austin, Texas 78701
Telephone: (512) 692-8700
Facsimile: (512) 692-8744
jcampbell@mckoolsmith.com
kli@mckoolsmith.com

16 Attorneys for Plaintiff
17 IMMERSION CORPORATION